



## Federal Aviation Administration

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# Memorandum

Date: JAN 15 2013

To: Ronald C. Engler, Director, Special Investigations (JI-3)

From: H. Clayton Foushee, Director, FAA Office of Audit and Evaluation (AAE-1)

Prepared by: Douglas E. Peters, Manager, Audit and Analysis Branch (AAE-100)

Subject: FAA Response to OIG Investigation # I10A000073SINV, Re: FAA  
Transport Airplane Directorate, Seattle, WA

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In June 2012, OIG provided a report of investigation (ROI) regarding the negative atmosphere at the FAA's Transport Airplane Directorate. The ROI was provided for action as deemed appropriate and did not request a response from the FAA.

The Office of Audit and Evaluation provided the ROI to Aircraft Certification Service's (AIR) leadership. AIR reviewed the ROI and provided the attached memorandum in response to the OIG's findings. The response clarifies some of the OIG's findings. It also includes a summary of pertinent action taken by AIR since the investigation.

We note that in the methodology section of the ROI there is a casual mention of a "CRJ 1000 flame arrestors Safety Issue Reporting report." However, the ROI's focus is of FAA's oversight of Boeing. There is no reference in the ROI to any issue related to a CRJ or Canadair Regional Jet. If appropriate, please provide any clarifying information related to the CRJ reference.

If you have any questions or concerns, please feel free to contact me at (202) 267-9000 or Douglas E. Peters at (202) 493-4949.



# Federal Aviation Administration

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## Memorandum

Date: DEC 28 2012

To: H. Clayton Foushee, Director, Office of Audit and Evaluation, AAE-1

From: Dorenda D. Baker, Director, Aircraft Certification Service AIR-1

Subject: ACTION: OIG Investigation # I10A000073SINV, Re: FAA Transport  
Airplane Directorate, Seattle Washington

*Dorenda D. Baker* 12/27/12

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By Memorandum dated June 22, 2012, the Office of the Inspector General (OIG) provided their Report of Investigation on the atmosphere in the AIR Transport Airplane Directorate. The Aircraft Certification Service (AIR) appreciates the information collected and provided in the report. We reviewed the findings and offer additional insight regarding the allegations and an update on the actions taken since the audit. The attached document lists the OIG's findings and AIR's response to each.

We compiled a file of documents that supports our response and would welcome a meeting to review the information with your office if you believe it would be helpful.

## AIR Response to OIG Report of Investigation # I10A000073SINV

**Allegation 1:** TAD and FAA headquarters managers have not always supported TAD employee efforts to hold Boeing accountable.

**Finding 1a:** TAD managers have not, as required by FAA guidance, documented Boeing appeals of decisions made by TAD staff to TAD or FAA headquarters managers. As a result, TAD employees believe there is a lack of transparency in decisions made by their managers.

**AIR Response:** The TAD managers' actions were consistent with AVS and AIR guidance. The Aviation Safety (AVS) and AIR Consistency and Standardization Initiative (CSI) process provides a structured, optional process for stakeholders to appeal or request reconsideration of an aviation safety decision made by an AVS office in performing our regulatory and policy responsibilities. The FAA cannot require or deny a stakeholder from pursuing resolution to disagreements through avenues outside of the (CSI) process. Whether or not the stakeholder elects to use CSI the stakeholder generally works at the lowest level possible to resolve differences first, but at times, appeals have been directed by the stakeholder to office-level management or to higher level (TAD, AIR, AVS and AOA) management and executives.

As stated in AIR QPM# AIR-001-013 Section 3.2 stakeholders have specific responsibilities when opting to use the CSI process to resolve a dispute. Stakeholders have been educated regarding the availability of the CSI process and may, at their discretion, elect to initiate a CSI appeal. If a stakeholder decides to use the CSI the internal AIR QMS process requires the appeal to be tracked through the electronic workflow system. Appeals are not required to be recorded in AIR's automated CSI module. If a stakeholder does not to use the CSI process they may seek resolution using alternative methods such as written correspondence, e-mails or face-to-face meetings. Other means of documenting issue resolution is through issue papers and the Safety Issues Reporting System (SIRS).

**Finding 1.b:** TAD management overturned its staff's recommendation to remove Boeing's Organization Designation Authorization (ODA) Authorized Representative (AR) Administrator and has not adequately addressed employee's concerns regarding potential ODA conflicts of interests. As a result, TAD employees view this as evidence of TAD management having too close a relationship with Boeing officials.

**AIR Response:** TAD management did not overturn its staff's recommendation to remove Boeing's ODA AR Administrator. TAD management agreed with the overall staff assessment that a change was needed regarding the AR Administrator. In April of 2011, the FAA worked with Boeing regarding the behavior and performance of the AR Administrator. At no time did TAD management disagree with the employees regarding the overall performance assessment of the AR Administrator. However, there was a difference of opinion on the nature and timing of the required corrective action. On July 11, 2011, Boeing proposed that "coaching" the AR Administrator would suffice and that further corrective action was unnecessary. On August 8, 2011, TAD responded

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to Boeing that “While your response does provide additional information, it does not provide sufficient corrective action.” Shortly thereafter, on August 17, 2011, Boeing notified the FAA the AR Administrator would, as requested by the FAA, be reassigned from his appointed position.

Finding 1.b also included TAD employee allegations about Boeing’s reorganization, during which the Boeing Certification Office was merged with the Boeing ODA. TAD employees alleged that Boeing ODA members had aircraft delivery goals included in their performance standards, creating a conflict of interest for these Boeing employees.

The Boeing ODA’s organizational structure meets the requirements of FAA Order 8100.15. It is permissible for the ODA lead administrator to have company performance standards beyond their FAA-appointed functions. It is expected that the ODA lead administrator can perform both functions without conflict, as was demonstrated in the past with the previous Organizational Designated Airworthiness Representative (ODAR) who was also a part of the Regulatory Administration for Quality and Manufacturing. On numerous occasions the ODAR delayed airplane deliveries when appropriate, and their authority was not questioned.

The FAA will continue to monitor all ODAs for possible conflict of interest. Including the certification group within the Regulatory Administration organization of the ODA ensures that the ODA has influence over the certification activities. This drives adherence to the regulatory requirements from the beginning of projects, as well as the accountability and compliance culture of the airplane program groups. This also aligns with the ICAO Safety Management Systems (SMS) principles of safety promotion.

**Finding 1.c:** TAD has not taken timely action to issue airworthiness directives for cargo and pre-1992 passenger aircraft that would require Boeing to address safety issues related to the fuel quantity indicating system (FQIS) wiring.

**AIR Response:** We agree that it has been a long and arduous process to get to this point. However it was not due to inaction.

As noted in the OIG report the Boeing 757 FQIS protection Notice of Proposed Rulemaking Airworthiness Directive was published in the Federal Register on March 1, 2012. The comment period was extended to August 6, 2012. Several substantive comments were received, including comments stating that the proposed actions for cargo airplanes are more costly than the FAA estimated, and not warranted. The FAA is in process of dispositioning the comments.

On July 13, 2012, in an effort to hold Boeing accountable for delays it has created or prolonged, the Federal Aviation Administration proposed to fine Boeing Co. \$13.57 million for failing to meet a 2010 deadline to give airlines information on how to reduce fuel tank flammability.

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**Finding 1.d:** FAA headquarters managers have not addressed TAD employee and FAA regional counsel concerns arising from implementation of the “changed product” rule.

Concern 1: FAA headquarters has not initiated formal rulemaking to make clear that the intent of FAR 21.97 is to require only that “changes” to aircraft certified under this rule meet current airworthiness Standards, not the entire aircraft.

Concern 2: FAA headquarters has not required Boeing to correct non-compliant designs that do not result in an unsafe condition and has not tracked the impact of these non-compliances. These failures may expose FAA to liability if it was determined they contributed to an accident.

Concern 3: For aircraft certified under 21.97, FAA headquarters has not required Boeing to provide a statement certifying that the entire aircraft meets the airworthiness standards. Instead Boeing certifies only that the changes meet the current standards.

Concern 4: Contrary to the intent of FAR 21.20, Boeing has made its statement of compliance after the ODA (on FAA’s behalf) has completed its review and approval of the certification package.

**AIR Response:** Concern 1: In June 2011 the TAD management received clarification from the AIR office responsible for the CFR part 21 that the intent of FAR 21.97 is to apply only to “changes” to aircraft certified under this rule meet current airworthiness standards, not the entire aircraft. In September 2011 AIR began work on a project to issue a clarification amendment to the Changed Product Rule. In February 2012, after legal review, the team was directed to develop a direct final rule. The technical team and legal council continued to discuss the change and the preamble language. In August 2012 the team met to resolve an impasse and the reached preliminary team concurrence to proceed with rulemaking on September 25, 2012. The change to §21.97 and §21.101 was issued November 21, 2012 and published in the Federal Register December 4, 2012.

Concern 2: July 10, 2012 Boeing amended the Boeing Processes and Procedures Manual to include the Delivery Control Process for Non-Compliances to Airworthiness Standards (BPM 15.1.23), the Notification of Airworthiness Non-Compliance (BPM 14.2) and Airworthiness Standard Non-Compliance Corrective Action (BPM 17.1). These processes are equivalent to the intent of the chart used by TAD that required applicants to correct all non-compliances.

Concern 3: This issue is currently being worked to resolve the difference of interpretation of 14 CFR 21.97 and 21.101.

Concern 4: Boeing's applicant statement of compliance, required by FAR 21.20(b), is signed by the Boeing Chief Program Engineer, the Technical Services Certification Manager, the Safety Certification & Performance Manager, or a delegate. Per Boeing processes specified in Boeing Procedures Instructions BPI-3716, which is referenced in Boeing's ODA procedures manual, this statement is not signed until completion of all the

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certification tests and inspections identified in the certification plan, and completion of associated Form 8100-9s. After BCA determines that all the required project activities have been completed and the company statement of compliance has been provided by BCA per FAR 21.20(b), the project package is presented to the ODA Project Administrator (PA), who is the Project Administrator within the ODA unit. The ODA PA verifies that everything is complete, and then per the processes in BPI-3716 fills out Form 8100-11 to close the project. This process does not conflict with the intent of FAR 21.20(b).

ODA procedures related to project completion and obtaining applicant statements of compliance as required by FAR 21.20(b) do not adversely impact the FAA's ability to apply discretionary authority since discretionary authority decisions are made early in the project, not near the end when the project is in the process of being closed. ODA project delegation decisions are made early in the project at the certification plan level, after which direct FAA involvement is very limited. Some projects are automatically delegated to Boeing per the processes and safety criteria included in the Boeing Procedures Manual (BPM). Other projects which the FAA has continued interest based on safety criticality are submitted to the FAA OMT for review and delegation decisions.

### **Allegation 2: As a result of TAD and FAA headquarters managers having not always supported TAD employee efforts to hold Boeing accountable, a negative work environment exists for TAD employees**

**Finding:** As a result of TAD and FAA headquarters managers having not always supported TAD employee efforts to hold Boeing accountable, a negative work environment exists for TAD employees. TAD employees fear their managers will retaliate against them for attempting to hold Boeing accountable.

**AIR Response:** The finding is based on a sampling of 3 % of the TAD staff. The specific example of alleged retaliation stems from the rescinding of one TAD employee's telework privileges, and the coincidental timing of that event with his SIRS submission. The rescinding of the employee's telework agreement was the result of the employee falling far behind on multiple projects. In spite of frequent reminders of project schedules by program managers, the employee lost track of the project schedules and did not give timely attention to his projects. The employee's delays created perceived crises on two separate projects in a matter of days.

When the employee raised his concerns at the last minute, the FAA's certificate managing offices and the applicants were frustrated by the significant impact the late issues could have on their project schedules. Having the employee in the office rather than working at home ensured he would be available for direct coordination with program managers and be more aware of program schedules. AIR recognizes that the timing of the events adds to employee fear of retaliation however in subsequent discussions with the employee, he acknowledged that it had been explained to him that

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rescinding the telework agreement was not related to his SIRS submittal. The employee has since been allowed to resume teleworking and is now a member of a team that was chartered by NATCA and AIR on April 23, 2012 to provide a recommendation for a Safety Reporting System that is non-punitive, confidential, and timely. The team submitted its report on November 16, 2012 and will brief AVS management in January 2013.